

1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
3 HARINDER K. KAPUR  
Deputy Attorney General  
4 State Bar No. 198769  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2075  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO February 15 2011  
BY *Debra K. [Signature]* ANALYST

9 **BEFORE THE**  
10 **BOARD OF PODIATRIC MEDICINE**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1B-2010-204354

13 **NICHOLAS C. CRISMALI, D.P.M.**  
14 **18151 Bear Valley Road**  
**Hesperia, CA 92345**

**A C C U S A T I O N**

15 **Doctor of Podiatric Medicine License**  
16 **No. E-3433**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. James H. Rathlesberger (Complainant) brings this Accusation solely in his official  
22 capacity as the Executive Officer of the Board of Podiatric Medicine, State of California.

23 2. On or about June 16, 1987, the Board of Podiatric Medicine issued Doctor of  
24 Podiatric Medicine License Number E-3433 to NICHOLAS C. CRISMALI, D.P.M.  
25 (Respondent). The Doctor of Podiatric Medicine License was in full force and effect at all times  
26 relevant to the charges brought herein and will expire on April 30, 2011, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Podiatric Medicine (Board) for the Department of Consumer Affairs, State of California, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2222 of the Code states

“The California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out this chapter as to licensed physicians and surgeons, the Medical Quality Hearing Panel also possesses that same authority as to licensed doctors of podiatric medicine.

“The California Board of Podiatric Medicine may order the denial of an application or issue a certificate subject to conditions as set forth in Section 2221, or order the revocation, suspension, or other restriction of, or the modification of that penalty, and the reinstatement of any certificate of a doctor of podiatric medicine within its authority as granted by this chapter and in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code. For these purposes, the Board shall exercise the powers granted and be governed by the procedures set forth in this chapter.”

5. Section 2497 of the Code states:

“(a) The board may order the denial of an application for, or the suspension of, or the revocation of, or the imposition of probationary conditions upon, a certificate to practice podiatric medicine for any of the causes set forth in Article 12 (commencing with Section 2220) in accordance with Section 2222.

“(b) The board may hear all matters, including but not limited to, any contested case or may assign any such matters to an administrative law judge. The proceedings shall be held in accordance with Section 2230. If a contested case is heard by the board itself, the administrative

1 law judge who presided at the hearing shall be present during the board's consideration of the case  
2 and shall assist and advise the board.”

3 6. Section 2234 of the Code states:

4 “The Division of Medical Quality<sup>1</sup> shall take action against any licensee who is  
5 charged with unprofessional conduct. In addition to other provisions of this article,  
6 unprofessional conduct includes, but is not limited to, the following:

7 “(a) Violating or attempting to violate, directly or indirectly, assisting in or  
8 abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5,  
9 the Medical Practice Act].

10 “(b) Gross negligence.

11 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent  
12 acts or omissions. An initial negligent act or omission followed by a separate and distinct  
13 departure from the applicable standard of care shall constitute repeated negligent acts.

14 “(1) An initial negligent diagnosis followed by an act or omission medically  
15 appropriate for that negligent diagnosis of the patient shall constitute a single negligent  
16 act.

17 “(2) When the standard of care requires a change in the diagnosis, act, or omission  
18 that constitutes the negligent act described in paragraph (1), including, but not limited to, a  
19 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs  
20 from the applicable standard of care, each departure constitutes a separate and distinct  
21 breach of the standard of care.

22 “...”

23 ///

24 ///

---

25 1. California Business & Professions Code section 2002, as amended and effective January  
26 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in the  
27 State Medical Practice Act (Cal. Bus. & Prof. Code §§2000 et seq.) means the “Medical Board  
28 of California,” and references to the “Division of Medical Quality” and “Division of Licensing”  
in the Act or any other provision of law shall be deemed to refer to the Board.

7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

## COST RECOVERY

8. Section 2497.5 of the Code states:

“(a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

“(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

“(c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

“(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

“(e)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

“(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within one year period for those unpaid costs.

///

///

1 “(f) All costs recovered under this section shall be deposited in the Podiatry Fund as a  
2 reimbursement in either the fiscal year in which the costs are actually recovered or the previous  
3 fiscal year, as the board may direct.”

#### 4 FIRST CAUSE FOR DISCIPLINE

##### 5 (Gross Negligence)

6 9. Respondent has subjected his Doctor of Podiatric Medicine License Number E-3433  
7 to disciplinary action under Code sections 2222, 2497 and 2234, as defined by section 2234,  
8 subdivision (b), in that Respondent committed gross negligence in his care and treatment of  
9 patient C.D. The circumstances are as follows:

10 10. On or about February 24, 2003, patient C.D., a then 20 year old patient, presented to  
11 Respondent with complaints of occasional moderate pain and stated that “Walking is the only  
12 activity I can do.” Respondent recommended a neurological evaluation, and nerve and EMG  
13 studies.

14 11. On or about January 1, 2004, Respondent recommended, and patient C.D. agreed to  
15 undergo, pantalar arthrodesis<sup>1</sup> and fusion of the lesser digits. Preoperative radiograph revealed  
16 adequate bone in the talus to place smaller screws or staples across the talonavicular joint.<sup>2</sup>

17 12. On or about February 17, 2004, patient C.D. was seen for a pre-operative visit.  
18 Respondent did not document some of the pathology in question, neither did he list the range of  
19 motion of the ankle joint.

20 13. On or about February 18, 2004, patient C.D. underwent the procedure. During  
21 surgery, Respondent having denuded cartilage from the talar head and navicular bones, did not  
22 believe he had sufficient room to place fixation devices in the talus. Respondent, employing a  
23 procedure which he had reportedly learned in Italy, but which he had never performed before and

---

24 <sup>1</sup> A procedure for stabilization of the ankle, rearfoot, and midfoot.

25 <sup>2</sup> The talonavicular joint is located at the top of the foot and is commonly called the ankle  
26 joint. This joint is made up of the talus, a bone located at the top of the foot, and the tibia and  
27 fibula, the two bones that make up the lower leg. When the lower parts of the tibia and fibula  
28 come together, they form a recess near the ankle. This is where the curved top of the talus fits in  
to form the ankle joint. This joint allows humans to move their feet up and down.

1 is not recognized in the United States, attempted to arthrodesis<sup>3</sup> both the talonavicular and  
2 talocalcaneal<sup>4</sup> joints by placing a screw through the navicular, talus, and into the calcaneus.  
3 Respondent did not document whether he denuded any cartilaginous surface of the talocalcaneal  
4 joint.

5 14. During the surgery and postoperatively, Respondent failed to recognize and timely  
6 treat a large degree of forefoot equinus<sup>5</sup> which had been created during surgery as a result of his  
7 decision to displace the talus anteriorly thereby causing tension on the plantar fascia and related  
8 tendons.

9 15. On or about March 1, 2004, Respondent dictated the operative report and documented  
10 that he achieved fusion of the joints, although he stated during his interview with Medical Board  
11 Investigator Sean Nealy that he was only trying to "stabilize" the joints. Respondent did not  
12 discuss fusion of the navicular-cuneiform and first cunieform-first metatarsal joint although the  
13 post-operative radiograph reveals two pins that appear to cross that area.

14 16. Post-operative radiograph reveals improper fixation of the digits in that the k-wire  
15 used on the 5th digit extends into the cuboid, while the k-wire used on the 3rd digit extends to the  
16 calcaneus.

17 17. On or about September 22, 2004, patient C.D. underwent surgery for pin and screw  
18 removal. X-rays revealed consolidation of the arthrodesis sites and apparent impingement of the  
19 head of the screw transfixing the talocalcaneal joint. Respondent did not document a preoperative  
20 history and physical for the procedure.

21 18. Respondent committed gross negligence in his care and treatment of patient C.D.,  
22 which included, but was not limited to, the following:

23  
24 \_\_\_\_\_  
25 <sup>3</sup> Operational joint reinforcement.

26 <sup>4</sup> Or subtalar joint is a plane synovial joint between the inferior surface of the talus and  
the posterior articular surface of the calcaneus.

27 <sup>5</sup> A bony shape of the foot where the forefoot is lower to the ground than the heel giving  
28 the foot a high arch appearance

1           a.     Respondent performed an unrecognized procedure as described in paragraph  
2     13, above.

3           b.     Respondent attempted to achieve fusion of the talocalcaneal joint without  
4     removing the articular cartilage.

## 5                               SECOND CAUSE FOR DISCIPLINE

### 6                               (Repeated Negligent Acts)

7           19.    Respondent has further subjected his Doctor of Podiatric Medicine License Number  
8     E-3433 to disciplinary action under Code sections 2222, 2497 and 2234, as defined by section  
9     2234, subdivision (c), in that Respondent committed repeated negligent acts in his care and  
10    treatment of patient C.D. and patient T.J., as more particularly alleged hereinafter.

11          20.    Paragraphs 10 through 17, above, are hereby incorporated by reference as if fully set  
12    forth herein.

13          21.    On or about November 10, 2007, patient T.J. was seen by Respondent for pain in both  
14    feet and ankles when walking. The exam revealed that patient T.J. had limited ankle dorsiflexion  
15    and tenderness to palpation.

16          22.    On or about March 6, 2008, respondent diagnosed patient T.J. with ankle synovitis,  
17    hallux valgus, hammertoes, and two neuromas. Respondent's diagnosis of Morton's neuroma<sup>6</sup>  
18    was made simply by noting tenderness and palpating the effected area. Patient T.J. never  
19    complained of any symptoms consistent with a diagnosis of Morton's neuroma, neither did  
20    Respondent elicit pain or clicking via Moulders sign, perform an ultrasound or imaging study to  
21    confirm the diagnosis, or offer patient T.J. conservative treatment for the neuromas. Respondent  
22    did not document any complaints of pain to the forefoot, bunions and hammertoes, or any  
23    discussions with patient T.J. regarding conservative care for those complaints. Patient T.J.  
24    requested surgical intervention to correct all of the conditions identified by Respondent.

25          23.    On or about September 30, 2008, patient T.J. continued to have limited ankle joint  
26    motion, deviation of the hallux, and contracture of digits 2 through 5 of the left foot.

---

27               <sup>6</sup> Morton's neuroma is a thickening of nerve tissue between the toes and commonly  
28    affects the nerve that travels between the third and fourth toes.

1 Respondent's treatment plan included arthroscopy, correction of hammertoes and hallux valgus  
2 left foot.

3 24. On or about October 29, 2008, Respondent performed 11 procedures on patient T.J.'s  
4 left foot, including removal of the suspected neuroma.

5 25. Respondent committed repeated negligent acts in his care and treatment of patient  
6 C.D. and patient T.J., which included, but was not limited to, the following:

7 a. Paragraphs 18a and 18b, above, are hereby incorporated by reference and  
8 realleged as if fully set forth herein.

9 b. Respondent improperly fixated the digits of patient C.D.

10 c. Respondent failed to recognize and treat patient C.D.'s severe forefoot equinus.

11 d. Respondent failed to properly diagnose and then treat patient T.J.'s Morton's  
12 neuromas.

### 13 THIRD CAUSE FOR DISCIPLINE

#### 14 (Failure to Maintain Adequate and Accurate Medical Records)

15 26. Respondent has further subjected his Doctor of Podiatric Medicine License Number  
16 E-3433 to disciplinary action under Code sections 2222, 2497 and 2234, as defined by section  
17 2266, in that he failed to maintain adequate and accurate records in connection with his care and  
18 treatment of patient C.D. and patient T.J., as more particularly alleged hereinafter.

19 27. Paragraphs 10 through 25, above, are hereby incorporated by reference as if fully set  
20 forth herein.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



PRAYER

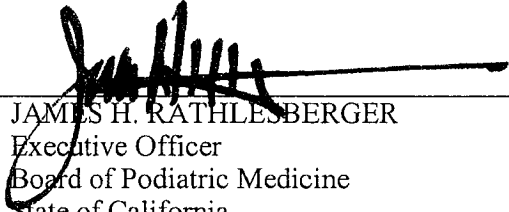
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Podiatric Medicine issue a decision:

1. Revoking or suspending Doctor of Podiatric Medicine License Number E3433, issued to Respondent, Nicholas C. Crismali, D.P.M.

2. Ordering Respondent Nicholas C. Crismali, D.P.M. to pay the Board of Podiatric Medicine the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5;

3. Taking such other and further action as deemed necessary and proper.

DATED: February 15, 2011

  
JAMES H. RATHLESBERGER  
Executive Officer  
Board of Podiatric Medicine  
State of California  
*Complainant*

SD2011700500  
Crismali Accusation1.docx